



PLANNING COMMISSION AGENDA REPORT

MEETING DATE: MARCH 13, 2006

III. 3.
ITEM NUMBER:

SUBJECT: A RESOLUTION AND AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING THE COSTA MESA 2000 GENERAL PLAN (GP-05-03) AND TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING DENSITY BONUSES AND OTHER INCENTIVES.

DATE: MARCH 1, 2006

FOR FURTHER INFORMATION CONTACT: KIMBERLY BRANDT, AICP, PRINCIPAL PLANNER
(714) 754-5604


DESCRIPTION

A resolution and an ordinance of the City Council of the City of Costa Mesa amending the Costa Mesa 2000 General Plan (GP-05-03) and Title 13 of the Costa Mesa Municipal Code regarding residential density bonuses and other incentives.

RECOMMENDATION

Adopt the attached resolution recommending to City Council adoption of the proposed General Plan amendment and that the proposed Zoning Code amendment be given first reading.


KIMBERLY BRANDT, AICP
Principal Planner


R. MICHAEL ROBINSON, AICP
Assistant Development Svs. Director

BACKGROUND:

In both 2004 and 2005, the State legislature made significant changes to the State Government Code regarding the provisions for allowing residential density bonuses and other incentives. The amendments reduce the percentage of affordable housing units necessary to qualify a development proposal for a density bonus, while increasing incentives for planning and construction of affordable housing. These changes to State law require corresponding changes to the City of Costa Mesa's 2000 General Plan and Municipal Code.

ANALYSIS:

Currently, the City's General Plan limits density bonuses for affordable housing projects. Specifically, if a density bonus would result in a density that exceeds the maximum allowable density in the Land Use Element, the project must be an affordable senior citizen project (pages LU-23 and 24, 2000 General Plan). Additionally, the Municipal Code establishes income limitations and thresholds for affordable housing that is limited to lower income and very-low income households and senior units. These provisions are no longer consistent with State law.

Both the City's General Plan and Municipal Code need to be appropriately amended, since State law mandates the City to grant density bonuses and other incentives or concessions (Government Code Section 65915 et. seq.) The proposed amendments to both documents are discussed in the following sections:

General Plan amendment: The following discussion regarding density bonuses is included in the Medium Density and High Density Residential land use designations:

Density bonuses may be granted by the City when a project is designed to provide to provide housing for individuals and families with specialized requirements (e.g., senior citizens, handicapped, very-low and low-income and other households with needs not sufficiently accommodated by conventional housing). Density bonuses that result in the project's resulting density to exceed the 2000 General Plan standard are limited to affordable senior citizen projects.

To reflect current State law, staff recommends the following changes to this text:

Density bonuses ~~may~~ shall be granted by the City when a project is designed to provide to provide housing for individuals and families with specialized requirements (e.g., senior citizens, handicapped, very-low, ~~and~~ low-income, and moderate income ~~and~~ other households with needs not sufficiently accommodated by conventional housing) or provide other facilities or land as required by State law. The City may also grant additional incentives or concessions pursuant to State law. ~~Density bonuses that result in the project's resulting density to exceed the 2000 General Plan standard are limited to affordable senior citizen projects.~~

The draft City Council resolution that amends the 2000 General Plan text is contained in Attachment 1.

Zoning Code amendment: As shown in Attachment 2, the Zoning Code devotes an entire article to affordable housing incentives. Additionally, the current code provides specific

information regarding density bonus concessions and incentives that is no longer consistent with State law. After careful review of the new State law requirements, staff determined that due to its length and complexity, State law should be referenced in the City's Zoning Code. This approach will reduce redundancy between the City's Zoning Code and State law and also eliminate the need to amend the Zoning Code every time State law is amended.

Therefore, the Affordable Housing Incentives article of the Zoning Code is proposed to be renamed "Density Bonuses and Other Incentives" and to include the following sections:

13-152. PURPOSE

13-153. QUALIFIED PROJECT

13-154. APPLICATION AND REVIEW PROCESS

Additionally, the "findings" contained in Section 13-29(g) of the Zoning Code are proposed to be amended to reflect current State law.

Attached to the proposed resolution in Attachment 1, is the proposed Zoning Code changes, which are indicated with underlined and strikeout text. Attachment 3 contains current State law provisions.

ALTERNATIVES CONSIDERED:

Commission may choose to do any of the following:

1. Recommend to Council adoption of GP-05-03, and that first reading be given to the ordinance as recommended by the staff; or
2. Modify any of the recommended changes to the General Plan text or draft ordinance.

ENVIRONMENTAL DETERMINATION:

This General Plan amendment and Zoning Code amendment have been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and have been found to be exempt.

CONCLUSION:

Once adopted, the proposed General Plan and Zoning Code amendments will bring the City's policies and code requirements in compliance with recent State law mandates.

Attachments:

1. Proposed Resolution
2. Existing Zoning Code Provisions
3. Existing State Law Provisions

Distribution: Deputy City Manager - Dev. Svs. Director
Deputy City Attorney
Public Services Director
City Engineer
Fire Protection Analyst
Staff (4)
File (2)

File: 030606DensityBonus	Date: 022306	Time: 4:50 p.m.
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ATTACHMENT 1

PROPOSED RESOLUTION

RESOLUTION NO. PC-06-

**A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF COSTA MESA, CALIFORNIA,
RECOMMENDING APPROVAL OF GENERAL PLAN
AMENDMENT GP-05-03 AND ZONING CODE
AMENDMENTS REGARDING DENSITY BONUSES AND
OTHER INCENTIVES.**

**THE PLANNING COMMISSION OF THE CITY OF COSTA MESA DOES HEREBY
RESOLVE AS FOLLOWS:**

WHEREAS, the City Council of the City of Costa Mesa adopted the 2000 General Plan on January 22, 2002; and

WHEREAS, the General Plan is a long-range, comprehensive document that serves as a guide for the orderly development of Costa Mesa; and

WHEREAS, by its very nature, the General Plan needs to be updated and refined to account for current and future community needs; and

WHEREAS, General Plan Amendment GP-05-05 amends the 2000 General Plan text as shown in Exhibit "A" regarding residential density bonuses in order to be consistent with recent changes in California State law; and

WHEREAS, it is also necessary to amend the City of Costa Mesa Municipal Code as shown in Exhibit "B" in respect to density bonuses requirements in order to maintain consistency with recent changes in California State law; and

WHEREAS, a public hearing was held on March 13, 2006 by the Planning Commission in accordance with Section 65355 of the Government Code of the State of California, with all persons having been given the opportunity to be heard both for and against said Amendment GP-05-03 to the General Plan and the Zoning Code amendment; and

WHEREAS, the environmental review for the project was processed in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Costa Mesa Environmental Guidelines, and

the project was determined to be exempt pursuant to Section 15061 of the CEQA Guidelines; and

WHEREAS, this Commission deems it to be in the best interest of the City that said Amendment to the General Plan and Zoning Code amendment be adopted.

BE IT RESOLVED that the Costa Mesa Planning Commission does hereby recommend to the City Council adoption of General Plan Amendment GP-05-03 that amends the text of the 2000 General Plan as set forth in Exhibit "A", which is attached to this resolution.

BE IT FURTHER RESOLVED that the Costa Mesa Planning Commission does hereby recommend to the City Council adoption of the Zoning Code amendments as set forth in Exhibit "B", which is attached to this resolution.

PASSED AND ADOPTED this _____ day of _____, 2006.

Bill Perkins, Chairman
Costa Mesa Planning Commission

STATE OF CALIFORNIA))ss
COUNTY OF ORANGE)

I, Michael Robinson, secretary to the Planning Commission of the City of Costa Mesa, do hereby certify that the foregoing resolution was passed and adopted at a meeting of the City of Costa Mesa Planning Commission held on March 13, 2006, by the following votes:

AYES: COMMISSIONERS

NOES: COMMISSIONERS

ABSENT: COMMISSIONERS

ABSTAIN: COMMISSIONERS

Secretary, Costa Mesa
Planning Commission

EXHIBIT “A”

2000 GENERAL PLAN AMENDMENTS

As the majority of land for Low-Density Residential use has become fully developed, future large scale single-family tract development is precluded. It can be expected that larger single-family lots will be proposed for subdivision in the future. Planned developments near the maximum density may also become more common, perhaps through combination of parcels and replacement of single-family development.

Non-residential uses that complement and serve the surrounding residential neighborhood are also appropriate within this designation. These uses typically include schools, parks, churches, libraries, and public facilities. Additional uses authorized by State law, such as group residential facilities, accessory apartments, granny flats, and family day care homes are also appropriate.

Compatible zoning districts include R1, PDR-LD, I&R, and I&R-S.

Medium-Density Residential

The Medium-Density Residential designation is intended for single- and multi-family developments with a density of up to 12 units to the acre. The 12 units to the acre standard can be exceeded for legal, non-conforming Medium-Density Residential lots of a certain size that existed as of March 16, 2000. These lots must be less than 7,260 square feet in size, but not less than 6,000 square feet. On lots that have a density calculation fraction equal to or greater than 1.65 units per acre, two units may be constructed.

The 12 dwelling units per acre standard is exceeded by approximately 53 percent of the existing Medium-Density development. Existing non-conforming units, that are voluntarily destroyed, may be rebuilt to the same density, subject to other standards of the zoning code and the following: the allowable density or number of units to be redeveloped is limited to the 2000 General Plan density plus a 25 percent density incentive bonus or the existing number of units, whichever is less.

At an average household size of 2.74 persons per dwelling unit, the projected population density within this designation would be 32.9 persons per acre.

Density bonuses shall be granted by the City when a project is designed to provide to provide housing for individuals and families with specialized requirements (e.g., senior citizens, handicapped, very-low, and low-income, and moderate income households with needs not sufficiently accommodated by conventional housing) or provide other facilities or land as required by State law. The City may also grant additional incentives or concessions pursuant to State law. Density bonuses may be granted when a project is designed to provide housing for households with specialized requirements (e.g., senior citizens, handicapped, very-low and low-income, and other households with needs not sufficiently accommodated by conventional housing). Density bonuses that result in the project's density to exceed the General Plan standard are limited to affordable senior citizen projects.

The type of development in this designation is generally less oriented to outdoor living activities and is thus more tolerant to impacts that might adversely affect low-density residential development. Although still susceptible to the impacts caused by more intense uses and noise, a Medium-Density Residential development has greater potential to provide mitigation through visual and acoustical shielding. Areas for Medium-Density Residential use can be established closer to potentially disparate uses than can Low-Density

Residential, providing the potential impacts are not of a severity that precludes mitigation.

Because of the location and intensity of development, Medium-Density Residential areas are also appropriate for quasi-residential uses such as convalescent hospitals and group residential homes. Schools, churches, parks, libraries, and related public facilities are also appropriate.

Complementary commercial uses within this designation may be allowed in planned development projects provided that the commercial uses will have floor area ratios that are the same as the Neighborhood Commercial land use designation.

Medium-Density Residential areas are distributed throughout the City. The main concentration is located southeast of Newport Boulevard between Mesa Drive and 19th Street; northwest of Orange Avenue; southeast of Orange Avenue between 16th and 18th Streets; and between Santa Ana and Irvine Avenue north of Santa Isabel.

Compatible zoning districts include R1, R2-MD, PDR-MD, I&R, and I&R-S.

High-Density Residential

Areas designated as High-Density Residential are intended for residential development with a density of up to 20 units to the acre with the exception of Sakioka lot 1, discussed in the following paragraph. Density bonuses shall be granted by the City when a project is designed to provide to provide housing for individuals and families with specialized requirements (e.g., senior citizens, handicapped, very-low, low-income, and moderate income households with needs not sufficiently accommodated by conventional housing) or provide other facilities or land as required by State law. The City may also grant additional incentives or concessions pursuant to State law. Density bonuses may be granted by the City when a project is designed to provide housing for individuals and families with specialized requirements (e.g., senior citizens, handicapped, very-low and low-income and other households with needs not sufficiently accommodated by conventional housing). Density bonuses that result in the project's resulting density to exceed the 2000 General Plan standard are limited to affordable senior citizen projects.

Sakioka lot 1, a 41-acre vacant parcel, located in the Town Center area of the City adjacent to Anton Boulevard, has a higher density limit of 25 to 35 units to the acre. The upper limit of 35 units per acre shall include any density bonus.

The maximum density of 20 dwelling units per acre is exceeded by approximately 46 percent of existing High-Density development. Existing non-conforming developments, that are voluntarily destroyed, may be rebuilt to the original density subject to other standards of the zoning code and the following: the allowable density or number of units to be redeveloped would be limited to the 2000 General Plan density plus a 50 percent density incentive bonus or the existing number of units, whichever is less.

With an average household size of 2.74, the projected population density within this designation would be 54.8 persons per acre.

High-Density areas should be located in proximity to transportation routes, especially those served by public transit, and also within convenient distances to shopping and employment centers. Although proximity to the above uses and

EXHIBIT “B”

Zoning Code Amendment

ORDINANCE NO. 06-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA, CALIFORNIA AMENDING TITLE 13 OF THE COSTA MESA MUNICIPAL CODE REGARDING DENSITY BONUSES AND OTHER INCENTIVES.

THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Title 13 of the Costa Mesa Municipal Code is hereby amended to read as follows:

a. Amend Section 13-29(g) as follows:

“(3) Density bonus and concession or incentive findings:

- a. The request is consistent with State Government Code Section 65915 et. seq. regarding Density Bonuses and Other Incentives, the General Plan, any applicable specific plan, City Council policy number 500-3 and CHAPTER IX SPECIAL REGULATIONS, ARTICLE 4 DENSITY BONUSES AND OTHER INCENTIVES.
- b. The requested density bonus and incentive or concessions ~~or in-lieu incentives~~ constitute the minimum amount necessary to provide housing at the target rents or sale prices and/or a child care facility.
- c. The granting of the incentive or concession is required in order to provide for affordable housing costs, as defined in Health and Safety Code Section 50052.5 or for rents for the targeted units.
- d. The granting of the incentive or concession and/or the waiver or reduction of development standards does not have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Government Code Section 65589.5 upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.
- e. The granting of the incentive or concession and/or the waiver or reduction of development standards does not have an adverse impact on any real property that is listed in the California Register of Historical Resources.”

- b. Amend Article 4, Sections 13-52 through Section 13-58, as follows:

"ARTICLE 4. AFFORDABLE HOUSING DENSITY BONUSES AND OTHER INCENTIVES

Sec. 13-152. PURPOSE

The purpose of this article is to provide incentives for the production of lower income affordable housing, and senior housing, and child care facilities in compliance with State Government Code Section 65915 et. seq. regarding Density Bonuses and Other Incentives.

~~Sec. 13-153. DEFINITIONS~~

~~The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.~~

~~**Concessions.** The reduction in site development standards, Zoning Code requirements, development fees or dedication requirements, which result in identifiable cost reductions.~~

~~**Housing project.** New development or conversion of existing residential buildings of 5 or more residential dwelling units.~~

~~**Incentives in lieu of density bonus.** Incentives of equivalent financial value based upon the land cost per dwelling unit(s) of density bonus.~~

~~**Qualifying resident.** A resident as defined in State Civil Code Section 51.2, i.e., 62 years of age or older, or 55 years of age or older in a senior citizens housing development consisting of at least 150 dwelling units.~~

~~**Very low income household.** Households as defined in State Health and Safety Code Section 50105.~~

~~**Very low income rent.** Rent affordable to very low income households, not to exceed 30 percent of 50 percent (i.e., 15 percent) of the area median income as adjusted for household size and as defined in State Government Code Section 65915.~~

Sec. 13-154 153. QUALIFIED PROJECT

To qualify for a density bonus and concessions or other incentives, the developer of a proposed housing project of at least 5 units, must agree, in a written agreement acceptable to the City Attorney, to construct provide housing units affordable to certain income households, donate land, and/or construct a child

~~care facility pursuant to State Government Code Section 65915 et. seq. a minimum of 20 percent of the total units of the housing project as affordable and reserved for lower income households, a minimum of 10 percent of the total units of the housing project as affordable and reserved for very low income households, or a minimum of 50 percent of the total units of the housing project reserved for qualified (senior) residents. The designated senior units shall be subject to low income affordable limits.~~

~~Any density bonus shall not be included when determining the number of housing units which is equal to 10 percent, 20 percent or 50 percent of the total units of the housing project.~~

~~Sec. 13-155. DENSITY BONUS CONCESSIONS AND INCENTIVES~~

~~(a) Upon application by a developer as provided in CHAPTER III PLANNING APPLICATIONS, the City shall offer a density bonus to qualified low, very low income, or senior housing projects provided the density bonus is consistent with the General Plan. Where a density bonus would cause the housing project to exceed the General Plan dwelling unit density for qualified low or very low income (non-senior) projects, then the City shall offer in lieu, incentives or concessions which may include, but not be limited to, the following:~~

~~—— (1) A partial density increase up to the General Plan density.~~

~~—— (2) Reduction or waiver of Planning Division fees.~~

~~—— (3) Reduction or waiver of Building plan check and permit fees.~~

~~—— (4) Accelerated plan check by City Staff.~~

~~—— (5) Reduction or waiver of street dedication or infrastructure improvements excluding those infrastructure improvements required by the Costa Mesa Sanitary District and Mesa Consolidated Water District or Santa Ana Heights Water Company.~~

~~—— (6) Reduction or waiver of in-lieu Park Fees.~~

~~—— (7) Rezoning to a higher density or to mixed use. Where City Council finds that the adoption of a change in zone classification to increase density for the subject property within 60 months prior to the density bonus or incentive application will be considered to be equivalent in value to State mandated incentives and qualifies as an incentive for purposes of this article, such change in zone classification shall be deemed an incentive for the purposes of this article.~~

~~—— (8) Modification or reduction of development standards up to a maximum reduction of 20 percent.~~

~~(9) Direct financial aid including, but not limited to Redevelopment set aside funding, Mello-Reos financing of infrastructure improvements, or Community Development Block Grant funding (if available).~~

~~(b) Any reduction, waiver, or modification to any applicable development standards of this Zoning Code shall be within the parameters listed above and not require variance findings; additionally any density bonus increase up to the General Plan density shall be considered as part of the density bonus or incentive application. The value of each incentive will vary from project to project, therefore in-lieu incentives shall be determined on a case-by-case basis.~~

~~Sec. 13-156. CONCESSIONS OR INCENTIVES IN EXCESS OF DENSITY BONUS~~

~~(a) All qualified housing projects as set forth in Section 13-154 QUALIFIED PROJECT shall be given priority in processing.~~

~~(b) In addition to density bonus or equivalent in-lieu incentives, the City may offer at least one additional concession or incentive. Possible additional concessions or incentives include, but are not limited to, the incentives or concessions set forth in Section 13-155 DENSITY BONUS CONCESSIONS AND INCENTIVES. For affordable senior housing projects, a reduction in parking requirements may be considered.~~

~~Sec. 13-157. TERM AND TENURE OF DENSITY BONUS DWELLING UNITS~~

~~(a) The 10 percent very low income dwelling units, 20 percent low income dwellings units, or 50 percent for qualifying residents (seniors) dwelling units provided in compliance with this Zoning Code and State Government Code Section 65915 shall be designated and maintained as affordable or senior dwelling units for a period of either 10 or 30 years. The ten-year affordable designation shall be required if the City only grants a density bonus. If the City grants a density bonus (or its equivalent) plus additional incentives or concessions, the affordable designation shall be required for 30 years. This unit designation term shall be designated pursuant to a written and executed density bonus/incentive agreement and land use restriction covenant which shall be recorded for the development site prior to issuance of building permits.~~

~~(b) The units designated as affordable to very low income households, low income households, or designated for senior households, shall be maintained as rental units, unless the developer by application pursuant to Section 13-158 APPLICATION AND REVIEW PROCESS requests ownership units and proposes in writing an affordable maintenance program that is acceptable to the City.~~

~~(c) The designated units shall represent a proportionate mix of dwelling unit square footage and number of bedrooms per unit, of the entire housing project.~~

Sec. 13-158-~~154~~. APPLICATION AND REVIEW PROCESS

- (a) **Preliminary application.** A developer of a qualified housing project and/or child care facility may submit a preliminary application pursuant to this article prior to the submittal of any formal requests for approvals for a housing project development.

Within 30 days of receipt of the application, the Planning Division shall provide to the applicant, the procedures for compliance with this article, a copy of this article and related policies, the pertinent sections of the State Codes to which reference is made in this article, and an density bonus or incentives application.

- (b) **Submittal.** The completed formal application shall include the following information.

- (1) A legal description of the total site proposed for development including a statement of present ownership and present and proposed zoning.
- (2) A letter signed by the present owner stating how the project will comply with State Government Code Section 65915 et. seq. and stating what is being requested of the City, i.e., density bonus and another specific concessions or incentives or equivalent in-lieu incentives.
- (3) A pro-forma for the proposed project to justify the requested concession or incentive and to establish the land valuation per dwelling unit of bonus units. The applicant shall show that any requested waiver or reduction of a development standard is necessary to make the housing units economically feasible.
- (4) A management plan for complying with the maintenance of the designated units regarding income qualification documentation and rent or sale price documentation.
- (5) Site plan and supporting plans per the planning application submittal requirements.

- (c) **Review.** The review of an application for a density bonus and concession or incentive request shall be processed as a planning application pursuant to CHAPTER III PLANNING APPLICATIONS. The Planning Division shall review the application for its conformance with State Government Code Section 65915 et. seq. and applicable City Codes and make a report to the Planning Commission. If the application involves a request for direct financial incentives, then any action by the Planning Commission on the application shall be advisory only, and the City Council shall have the

authority to make the final decision on the application.

Sections 13-55 through 13-58. Reserved for future use."

Section 2. Environmental Determination. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures, and has been found to be exempt pursuant to Section 15061 of the CEQA Guidelines.

Section 3. Inconsistencies. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to affect the provisions of this Ordinance.

Section 4. Severability. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance or its application to other persons. The City Council hereby declares that it would have adopted this Ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this Ordinance shall supersede any local, State, or Federal law, regulation, or codes dealing with life safety factors.

ATTACHMENT 2

EXISTING CODE PROVISIONS

ARTICLE 4. AFFORDABLE HOUSING INCENTIVES

Sec. 13-152. PURPOSE

The purpose of this article is to provide incentives for the production of lower income and senior housing in compliance with State Government Code Section 65915.

Sec. 13-153. DEFINITIONS

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Concessions. The reduction in site development standards, Zoning Code requirements, development fees or dedication requirements which result in identifiable cost reductions.

Housing project. New development or conversion of existing residential buildings of 5 or more residential dwelling units.

Incentives in lieu of density bonus. Incentives of equivalent financial value based upon the land cost per dwelling unit(s) of density bonus.

Qualifying resident. A resident as defined in State Civil Code Section 51.2, i.e., 62 years of age or older, or 55 years of age or older in a senior citizens housing development consisting of at least 150 dwelling units.

Very low income household. Households as defined in State Health and Safety Code Section 50105.

Very low income rent. Rent affordable to very low income households, not to exceed 30 percent of 50 percent (i.e., 15 percent) of the area median income as adjusted for household size and as defined in State Government Code Section 65915.

Sec. 13-154. QUALIFIED PROJECT

To qualify for a density bonus, concessions or other incentives, the developer of a housing project of at least 5 units, must agree, in a written agreement acceptable to the City Attorney, to construct a minimum of 20 percent of the total units of the housing project as affordable and reserved for lower income households, a minimum of 10 percent of the total units of the housing project as affordable and reserved for very low income households, or a minimum of 50 percent of the total units of the housing project reserved for qualified (senior) residents. The designated senior units shall be subject to low income affordable limits.

Any density bonus shall not be included when determining the number of housing units which is equal to 10 percent, 20 percent or 50 percent of the total units of the housing project.

Sec. 13-155. DENSITY BONUS CONCESSIONS AND INCENTIVES

(a) Upon application by a developer as provided in CHAPTER III PLANNING APPLICATIONS, the City shall offer a density bonus to qualified low, very low income, or senior housing projects provided the density bonus is consistent with the General Plan. Where a density bonus would cause the housing project to exceed the General Plan dwelling unit density for qualified low or very low income (non-senior) projects, then the City shall offer in lieu, incentives or concessions which may include, but not be limited to, the following:

- (1) A partial density increase up to the General Plan density.
- (2) Reduction or waiver of Planning Division fees.

Costa Mesa Zoning Code

- (3) Reduction or waiver of Building plan check and permit fees.
 - (4) Accelerated plan check by City Staff.
 - (5) Reduction or waiver of street dedication or infrastructure improvements excluding those infrastructure improvements required by the Costa Mesa Sanitary District and Mesa Consolidated Water District or Santa Ana Heights Water Company.
 - (6) Reduction or waiver of in-lieu Park Fees.
 - (7) Rezoning to a higher density or to mixed use. Where City Council finds that the adoption of a change in zone classification to increase density for the subject property within 60 months prior to the density bonus or incentive application will be considered to be equivalent in value to State mandated incentives and qualifies as an incentive for purposes of this article, such change in zone classification shall be deemed an incentive for the purposes of this article.
 - (8) Modification or reduction of development standards up to a maximum reduction of 20 percent.
 - (9) Direct financial aid including, but not limited to Redevelopment set aside funding, Mello-Roos financing of infrastructure improvements, or Community Development Block Grant funding (if available).
- (b) Any reduction, waiver, or modification to any applicable development standards of this Zoning Code shall be within the parameters listed above and not require variance findings; additionally any density bonus increase up to the General Plan density shall be considered as part of the density bonus or incentive application. The value of each incentive will vary from project to project, therefore in-lieu incentives shall be determined on a case-by-case basis.

Sec. 13-156. CONCESSIONS OR INCENTIVES IN EXCESS OF DENSITY BONUS

- (a) All qualified housing projects as set forth in Section 13-154 QUALIFIED PROJECT shall be given priority in processing.
- (b) In addition to density bonus or equivalent in-lieu incentives, the City may offer at least one additional concession or incentive. Possible additional concessions or incentives include, but are not limited to, the incentives or concessions set forth in Section 13-155 DENSITY BONUS CONCESSIONS AND INCENTIVES. For affordable senior housing projects, a reduction in parking requirements may be considered.

Sec. 13-157. TERM AND TENURE OF DENSITY BONUS DWELLING UNITS

- (a) The 10 percent very low income dwelling units, 20 percent low income dwellings units, or 50 percent for qualifying residents (seniors) dwelling units provided in compliance with this Zoning Code and State Government Code Section 65915 shall be designated and maintained as affordable or senior dwelling units for a period of either 10 or 30 years. The ten-year affordable designation shall be required if the City only grants a density bonus. If the City grants a density bonus (or its equivalent) plus additional incentives or concessions, the affordable designation shall be required for 30 years. This unit designation term shall be designated pursuant to a written and executed density bonus/incentive agreement and land use restriction covenant which shall be recorded for the development site prior to issuance of building permits.
- (b) The units designated as affordable to very low income households, low income households, or designated for senior households, shall be maintained as rental units, unless the developer by

Costa Mesa Zoning Code

application pursuant to Section 13-158 APPLICATION AND REVIEW PROCESS requests ownership units and proposes in writing an affordable maintenance program that is acceptable to the City.

- (c) The designated units shall represent a proportionate mix of dwelling unit square footage and number of bedrooms per unit, of the entire housing project.

Sec. 13-158. APPLICATION AND REVIEW PROCESS

- (a) **Preliminary application.** A developer of a qualified housing project may submit a preliminary application pursuant to this article prior to the submittal of any formal requests for approvals for a housing project development.

Within 30 days of receipt of the application, the Planning Division shall provide to the applicant, the procedures for compliance with this article, a copy of this article and related policies, the pertinent sections of the State Codes to which reference is made in this article, and a density bonus or incentives application.

- (b) **Submittal.** The completed formal application shall include the following information.

- (1) A legal description of the total site proposed for development including a statement of present ownership and present and proposed zoning.
- (2) A letter signed by the present owner stating how the project will comply with State Government Code Section 65915 and stating what is being requested of the City, i.e., density bonus and another concession or incentive or equivalent in-lieu incentives.
- (3) A pro-forma for the proposed project to justify the requested concession or incentive and to establish the land valuation per dwelling unit of bonus units.
- (4) A management plan for complying with the maintenance of the designated units regarding income qualification documentation and rent or sale price documentation.
- (5) Site plan and supporting plans per the planning application submittal requirements.

- (c) **Review.** The review of an application for a density bonus or incentive request shall be processed as a planning application pursuant to CHAPTER III PLANNING APPLICATIONS. If the application involves a request for direct financial incentives, then any action by the Planning Commission on the application shall be advisory only, and the City Council shall have the authority to make the final decision on the application.

ATTACHMENT 3

EXISTING STATE LAW PROVISIONS

GOVERNMENT CODE

SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (g), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code.

The local government shall enforce an equity-sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity-sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used within three years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote homeownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city,

county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
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10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
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5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate- Income Units	Percentage Density Bonus
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10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34

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(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. As used in subdivision (b), "total units" or "total dwelling units" does not include units permitted by a density bonus awarded pursuant to this section or any local law granting a greater density bonus. The density bonus provided by this section shall apply to housing developments consisting of five or more dwelling units.

(h) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county as provided for in this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31

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27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks both the increase required pursuant to this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned for development as affordable housing, and is or will be served by adequate public facilities and infrastructure. The land shall have appropriate zoning and development standards to make the development of the affordable units feasible. No later than the date of approval of the final subdivision map, parcel map, or of the residential development, the transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, except that the local government may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local government prior to the time of transfer.

(D) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of dedication.

(E) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(F) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(i) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of

square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(j) "Housing development," as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(k) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(1) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will

reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code.

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city,

county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for any purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. Any penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for childcare services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998, by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.

if the attached housing development consists of four or fewer units.

(E) The attached housing development is located in an urbanized area as defined in Section 21071 of the Public Resources Code or within a census-defined place with a population density of at least 5,000 persons per square mile or, if the attached housing development consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(F) The attached housing development is located on an infill site as defined in Section 21061.0.5 of the Public Resources Code.

(b) At least 10 percent of the units of the attached housing development shall be available at affordable housing cost to very low income households, as defined in Section 50105 of the Health and Safety Code, or at least 20 percent of the units of the attached housing development shall be available at affordable housing cost to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or at least 50 percent of the units of the attached housing development available at affordable housing cost to moderate-income households, consistent with Section 50052.5 of the Health and Safety Code. The developer of the attached housing development shall provide sufficient legal commitments to the local agency to ensure the continued availability and use of the housing units for very low, low-, or moderate-income households for a period of at least 30 years.

(c) Nothing in this section shall prohibit a local agency from applying design and site review standards in existence on the date the application was deemed complete.

(d) The provisions of this section are independent of any obligation of a jurisdiction pursuant to subdivision (c) of Section 65583 to identify multifamily sites developable by right.

(e) This section does not apply to the issuance of coastal development permits pursuant to the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(f) This section does not relieve a public agency from complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) or relieve an applicant or public agency from complying with the Subdivision Map Act (Division 2 (commencing with Section 66473)).

(g) This section is applicable to all cities and counties, including charter cities, because the Legislature finds that the lack of affordable housing is of vital statewide importance, and thus a matter of statewide concern.

(h) For purposes of this section, "attached housing development" means a newly constructed or substantially rehabilitated structure containing two or more dwelling units and consisting only of residential units, but does not include a second unit, as defined by paragraph (4) of subdivision (h) of Section 65852.2, or the conversion of an existing structure to condominiums.

65589.5. (a) The Legislature finds and declares all of the following:

(1) The lack of housing is a critical problem that threatens the economic, environmental, and social quality of life in California.

(2) California housing has become the most expensive in the nation. The excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that

limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing.

(3) Among the consequences of those actions are discrimination against low-income and minority households, lack of housing to support employment growth, imbalance in jobs and housing, reduced mobility, urban sprawl, excessive commuting, and air quality deterioration.

(4) Many local governments do not give adequate attention to the economic, environmental, and social costs of decisions that result in disapproval of housing projects, reduction in density of housing projects, and excessive standards for housing projects.

(b) It is the policy of the state that a local government not reject or make infeasible housing developments that contribute to meeting the housing need determined pursuant to this article without a thorough analysis of the economic, social, and environmental effects of the action and without complying with subdivision (d).

(c) The Legislature also recognizes that premature and unnecessary development of agricultural lands for urban uses continues to have adverse effects on the availability of those lands for food and fiber production and on the economy of the state. Furthermore, it is the policy of the state that development should be guided away from prime agricultural lands; therefore, in implementing this section, local jurisdictions should encourage, to the maximum extent practicable, in filling existing urban areas.

(d) A local agency shall not disapprove a housing development project, including farmworker housing as defined in subdivision (d) of Section 50199.50 of the Health and Safety Code, for very low, low-, or moderate-income households or condition approval, including through the use of design review standards, in a manner that renders the project infeasible for development for the use of very low, low-, or moderate-income households unless it makes written findings, based upon substantial evidence in the record, as to one of the following:

(1) The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.

(2) The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they

existed on the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

(3) The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

(4) The development project is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.

(5) The development project is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article.

(A) This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.

(B) If the local agency has failed, in accordance with Section 65583.2, to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and that are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and facilities to accommodate the local agency's share of the regional housing need for the very low and low-income categories.

(e) Nothing in this section shall be construed to relieve the local agency from complying with the Congestion Management Program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code). Neither shall anything in this section be construed to relieve the local agency from making one or more of the findings required pursuant to Section 21081 of the Public Resources Code or otherwise complying with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Nothing in this section shall be construed to prohibit a local agency from requiring the development project to comply with objective, quantifiable, written development standards, conditions, and policies appropriate to, and consistent with, meeting the jurisdiction's share of the regional housing need pursuant to Section 65584. However, the development standards, conditions, and policies shall be applied to facilitate and accommodate development at the

density permitted on the site and proposed by the development project. Nothing in this section shall be construed to prohibit a local agency from imposing fees and other exactions otherwise authorized by law that are essential to provide necessary public services and facilities to the development project.

(g) This section shall be applicable to charter cities because the Legislature finds that the lack of housing is a critical statewide problem.

(h) The following definitions apply for the purposes of this section:

(1) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.

(2) "Housing development project" means a use consisting of either of the following:

(A) Residential units only.

(B) Mixed-use developments consisting of residential and nonresidential uses in which nonresidential uses are limited to neighborhood commercial uses and to the first floor of buildings that are two or more stories. As used in this paragraph, "neighborhood commercial" means small-scale general or specialty stores that furnish goods and services primarily to residents of the neighborhood.

(3) "Housing for very low, low-, or moderate-income households" means that either (A) at least 20 percent of the total units shall be sold or rented to lower income households, as defined in Section 50079.5 of the Health and Safety Code, or (B) 100 percent of the units shall be sold or rented to moderate-income households as defined in Section 50093 of the Health and Safety Code, or middle-income households, as defined in Section 65008 of this code. Housing units targeted for lower income households shall be made available at a monthly housing cost that does not exceed 30 percent of 60 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the lower income eligibility limits are based. Housing units targeted for persons and families of moderate income shall be made available at a monthly housing cost that does not exceed 30 percent of 100 percent of area median income with adjustments for household size made in accordance with the adjustment factors on which the moderate income eligibility limits are based.

(4) "Area median income" means area median income as periodically established by the Department of Housing and Community Development pursuant to Section 50093 of the Health and Safety Code. The developer shall provide sufficient legal commitments to ensure continued availability of units for very low or low-income households in accordance with the provisions of this subdivision for 30 years.

(5) "Neighborhood" means a planning area commonly identified in a community's planning documents, and identified as a neighborhood by the individuals residing and working within the neighborhood. Documentation demonstrating that the area meets the definition of neighborhood may include a map prepared for planning purposes which lists the name and boundaries of the neighborhood.

(6) "Disapprove the development project" includes any instance in which a local agency does either of the following:

(A) Votes on a proposed housing development project application and the application is disapproved.

(B) Fails to comply with the time periods specified in subparagraph (B) of paragraph (1) of subdivision (a) of Section 65950. An extension of time pursuant to Article 5 (commencing with

Section 65950) shall be deemed to be an extension of time pursuant to this paragraph.

(i) If any city, county, or city and county denies approval or imposes restrictions, including design changes, a reduction of allowable densities or the percentage of a lot that may be occupied by a building or structure under the applicable planning and zoning in force at the time the application is deemed complete pursuant to Section 65943, that have a substantial adverse effect on the viability or affordability of a housing development for very low, low-, or moderate-income households, and the denial of the development or the imposition of restrictions on the development is the subject of a court action which challenges the denial, then the burden of proof shall be on the local legislative body to show that its decision is consistent with the findings as described in subdivision (d) and that the findings are supported by substantial evidence in the record.

(j) When a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete, but the local agency proposes to disapprove the project or to approve it upon the condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that both of the following conditions exist:

(1) The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density. As used in this paragraph, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

(2) There is no feasible method to satisfactorily mitigate or avoid the adverse impact identified pursuant to paragraph (1), other than the disapproval of the housing development project or the approval of the project upon the condition that it be developed at a lower density.

(k) The applicant or any person who would be eligible to apply for residency in the development may bring an action to enforce this section. If in any action brought to enforce the provisions of this section, a court finds that the local agency disapproved a project or conditioned its approval in a manner rendering it infeasible for the development of housing for very low, low-, or moderate-income households, including farmworker housing, without making the findings required by this section or without making sufficient findings supported by substantial evidence, the court shall issue an order or judgment compelling compliance with this section within 60 days, including, but not limited to, an order that the local agency take action on the development project. The court shall retain jurisdiction to ensure that its order or judgment is carried out and shall award reasonable attorney's fees and costs of suit to the plaintiff or petitioner who proposed the housing development, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section. If the court determines that its order or judgment has not been carried out within 60 days, the court may issue further orders as provided by law to ensure that the purposes and policies of this section are fulfilled, including, but not limited to, an order to vacate the